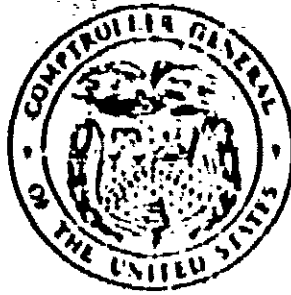


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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

2/1/60

FILE: B-204576

DATE: March 15, 1982

MATTER OF: Ramsey Canyon Enterprises

**DIGEST:**

1. Determination of whether justification to cancel solicitation prior to bid opening exists is a matter of agency discretion which will not be disturbed by GAO absent clear proof of abuse of discretion. Where the cancellation was based on a substantial change in requirements which occurred after issuance of the solicitation, there was no abuse of discretion. Moreover, extension of contract for services with incumbent is reasonable in view of above determination and need to prevent deterioration of facility which was the subject of the solicitation.
2. Accidental opening of protester's bid is without effect where it was done inadvertently in procuring activity mailroom because protester's name was not on IFB recipient list, and solicitation was properly canceled.
3. Claim for bid preparation costs is denied where the claimant has not shown that the agency abused its discretion in canceling solicitation.

Ramsey Canyon Enterprises (RCE) protests the cancellation of invitation for bids (IFB) No. N62474-81-B-8645 issued by the Naval Facilities Engineering Command (Navy), for caretaker services at the Naval Arctic Research Laboratory in Point Barrow, Alaska (NARL).

The IFB was canceled before bid opening because the Navy determined that its needs had substantially changed and were no longer reflected by the IFB. RCE protests that the Navy should be prohibited from extending the existing caretaker agreement with the incumbent, ITT

Arctic Services (ITT), and that the IFB should be readvertised for bids. RCE also claims bid preparation costs of \$5,000 for its bid, which was exposed. Based on the following, we deny the protest and the claim.

Prior to issuing the solicitation, the Navy was providing support services at the NARL. The Navy determined to reduce its activity at the NARL to a "caretaker" status (that is to the minimum level of activity needed to preserve essential research capabilities), with the intention of closing the facility during Fiscal Year 1982. In order to obtain caretaker services, and to close the NARL, the Navy issued the subject IFB. After issuance of the IFB, the Navy agreed to continue to provide support services to the United States Geological Survey (USGS), a tenant at the NARL. This requires the providing of logistics support and contractor support for the operation of certain gas fields for which USGS is responsible.

Having made this decision, the Navy determined that the IFB in question was inappropriate and inadequate to provide the type of support services required to maintain the USGS activity. The Navy determined that cancellation of the IFB was necessary, and that interim extension of the existing support services contract with ITT was necessary since, but for the presence of ITT contract employees at the NARL, the facility would begin to deteriorate due to the elements.

RCE states that the amendment canceling the solicitation was not mailed until 3 days prior to the scheduled bid opening, August 24, 1981, and RCE personnel had traveled from Arizona to California to attend the bid opening prior to receiving the notice. Having arrived at the bid opening and being advised of the cancellation, the RCE representative requested return of its bid. The bid was returned; however, it had been opened. RCE contends that the Navy knew or should have known at the time the IFB was issued that it was inadequate to provide caretaker services and support services to the USGS and should either not have issued the IFB or should have canceled it earlier than it did. RCE further asserts that it believes that there is some solicitation in process encompassing, among other things, the services under the canceled solicitation, and that it has not been given an opportunity to bid on this solicitation.

The Navy report indicates that the decision to continue services at a level greater than that of caretaker status, which generated the cancellation, was not made until after issuance of the IFB. The IFB was issued on June 30, 1981, and the Navy contracting office received a telegram from Navy headquarters on August 20, 1981, directing that no action be taken on the IFB. The amendment canceling the IFB was issued the same day. The Navy also indicates that the bid submitted by RCE was inadvertently opened in the procuring activity's mailroom because RCE was not on the list of persons or companies to which the IFB was distributed. Rather, the list included "Dennis Milligan," at an address of "85 Ramsey Canyon." Hence, the bid was opened because it was not apparent that it was a bid when it arrived.

We believe that the Navy acted properly in this situation. Defense Acquisition Regulation (DAR) §§ 2-209 and 2-404.1(b)(iii) (1976 ed.) permit cancellation of a solicitation either before or after bid opening when it is determined the supplies or services are no longer needed.

In construing these provisions, we have held that the determination whether a cogent reason exists for cancellation is a matter primarily within the discretion of the contracting agency and, therefore, will not be disturbed by our Office absent clear proof of abuse of discretion. MICA, Inc., B-200735, June 22, 1981, 81-1 CPD 513.

In this instance, the Navy determination to substantially change the level of support services at the NARL occurred after the issuance of the IFB. Accordingly, the agency decided that cancellation was in order since the IFB was partly for services which had changed in nature and partly for services that had become unnecessary. At the same time, the Navy made the determination that extension of the existing contract was necessary in order to permit continuation of support services and preclude possible deterioration of the facility prior to the award of a contract under another solicitation for an increased level of support services. While the notice of cancellation was not sent until shortly before the scheduled date for bid opening, this resulted from the fact that the contracting office was directed to take this action only 4 days prior to bid opening because of the change in requirements. In view of the circumstances of the Navy's substantially changed requirements, it could reasonably have canceled even after bid opening. See

Freund Precision, Inc., B-201013, February 9, 1981, 81-1 CPD 79. The protester has not shown any abuse of discretion by the Navy in making these determinations, which appear reasonable in light of the circumstances. There is nothing in the record to suggest, as the protester has asserted, that the Navy knew, or should have known, prior to issuance of the original solicitation, that it was going to change the level of support required at the NARL.

Concerning the contention that RCE should be allowed to compete on the resolicitation, we have been advised by the Navy and USGS that no solicitation has been issued with respect to the NARL and that USGS is in the process of developing an appropriate solicitation. It will be synopsized in the Commerce Business Daily to obtain competition.

With respect to the accidental opening of RCE's bid, we note that the list of IFB recipients, as indicated by the Navy, does not include RCE. Thus, we find the explanation of the accidental opening in the mailroom to be reasonable. There is no evidence that the bid was compromised, as alleged by RCE, and the Navy states that after the inadvertent opening, the bid was resealed and forwarded to the contracting officer. In view of this, and the fact that the Navy could have canceled after bid opening, we find that RCE was not prejudiced by the opening of its bid. See Royal Silver Manufacturing Company, Inc., B-186422, June 13, 1977, 77-1 CPD 421; Boyd Lumber Corporation, B-189641, October 21, 1977, 77-2 CPD 315.

With respect to RCE's request for reimbursement of bid preparation costs, a prerequisite to entitlement is a showing that the Government acted arbitrarily or capriciously with respect to a claimant's bid or proposal. Scona, Inc., B-191894, January 23, 1979, 79-1 CPD 43. Since the cancellation constituted a reasonable exercise of discretion by the Navy, the protester is not entitled to bid preparation costs.

We deny the protest and the claim for bid preparation costs.

for *Wilton J. Arslan*  
Comptroller General  
of the United States